

**MINUTES OF CITY COUNCIL MEETING**  
**ARTESIA, NEW MEXICO**  
**January 28, 2014**  
**5:30 P.M.**

The City Council of the City of Artesia, New Mexico met in the City Council Chambers at City Hall on Tuesday, January 28, 2014 at 5:30 p.m. in special session with Mayor Phillip Burch presiding, and the following present to wit:

|                   |              |
|-------------------|--------------|
| Jose Luis Aguilar | Bill Rogers  |
| Kent Bratcher     | Jeff Youtsey |
| Manuel Madrid Jr  |              |

The following were absent:

Raul Rodriguez (\* joined the meeting at 5:40 p.m.)  
Terry Hill  
Nora Sanchez

Also present:

Aubrey Hobson, City Clerk-Treasurer  
John Caraway, City Attorney

It was determined that a quorum was present. Mayor Burch stated that the purpose of the meeting was for a termination hearing for a police department employee and turned the meeting over to Human Resources Director Bill Thalman.

Mr. Thalman stated that city ordinances allow for the employee to choose whether a meeting is open or closed, and in the absence of the employee, recommended that the hearing be conducted as a closed meeting.

Councilor Bratcher moved to close the termination hearing. The motion was seconded by Councilor Rogers and upon roll call vote, with the following votes recorded:

Aye: Aguilar, Bratcher, Madrid, Rogers, Youtsey

Nay: none

the motion passed.

The meeting closed at 5:35 p.m.

Councilor Rodriguez joined the meeting at 5:40 p.m.

The meeting opened at 6:05 p.m.

Councilor Rodriguez moved to re-open the termination hearing. The motion was seconded by Councilor Bratcher and upon vote, the motion passed.

Councilor Bratcher moved to uphold the termination of Police Officer Humberto Flores, effective January 28, 2014. The motion was seconded by Councilor Rodriguez and upon roll call vote, with the following votes recorded:

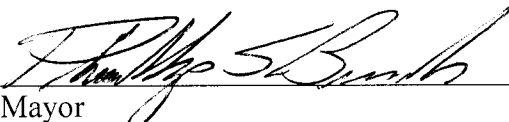
Aye: Aguilar, Bratcher, Madrid, Rodriguez, Rogers, Youtsey

Nay: none

the motion passed.

City Attorney John Caraway requested that the packet of information presented be attached to the minutes as part of the record.

There being no further business to come before the Council, the meeting adjourned at 6:10 p.m.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk



## THE CITY OF ARTESIA NEW MEXICO

511 W. TEXAS AVENUE  
PO BOX 1310  
ARTESIA, NM 88211-1310

(575) 746-3593 MAYOR  
(575) 746-2122 CITY CLERK  
(575) 746-3886 FAX

January 6, 2014

Humberto Flores  
22 W Wells  
Roswell, NM 88203

Corporal Flores

Re: Notice of Intent to impose disciplinary action, City of Artesia, Personnel Ordinance Number 615

Dear Corporal Flores

According to sub section 1-6-11, C of the City of Artesia Personnel Ordinance, you are scheduled for a Pre-termination Hearing. The date, time and place for this hearing is Thursday January 16, 2014 9:00 a.m., Artesia City Hall. This meeting will allow you to make a response to the stated charges in this letter and allow you to offer explanations and/or present witnesses in mitigation of the proposed disciplinary action. This is not a mini trial and there is no right to cross-examination. You and I may agree to an alternate date, time and/or place for this informal meeting in writing.

Proposed Disciplinary Action:

Termination of employment.

Violation of any rule or mandate:

See attached copy of letter from Chief Raley dated 12/17/13. Original was mailed certified to you on 12/17/13.

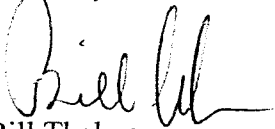
Explanation of documentation, evidence, and/or factors relied upon by the department head:

See attached copy of letter from Chief Raley dated 12/17/13. Original was mailed certified to you on 12/17/13.

Specific incidents that indicate just cause:

See attached copy of letter from Chief Raley dated 12/17/13. Original was mailed certified to you on 12/17/13.

Sincerely

A handwritten signature in black ink, appearing to read "Bill Thalman". The signature is fluid and cursive, with the first name "Bill" being more prominent than the last name "Thalman".

Bill Thalman

Human Resources Director

C.c. Mayor Burch

Don Raley

John Caraway

December 17 2013

Humberto Flores  
22 W. Wells  
Roswell, NM 88203

Corporal Flores

On December 12, 2013, a letter was hand delivered to you by Sergeant Ricardo Huerta providing you with specific directions for follow up with the City of Artesia's Human Resource Director Mr. Bill Thalman. This letter indicated that you were required to contact Mr. Thalman by Monday December 16, 2013 so that you could provide the City of Artesia with information pertaining to your leave status or return to work. You have failed to comply with that directive. This failure to comply with the directive puts in you in continued violation of the following Artesia Police Department Operating Procedures:

ADM05.02

- D. Written directives are position statements by or authorized through the Chief of Police that direct the actions and activities of members of the Department. Directives encompass means by which the Department communicates instructions, orders and duty requirements to its members.

The December 16, 2013 letter provided to you outlined your current duty requirements. You have not fulfilled those duty requirements leading to the continued violation of the following Artesia Police Department operating procedures:

PER12.06 Reporting for duty:

- A. Employees of the Department shall be fit, prepared and punctual in reporting for duty at the time and place designated by their supervisor
- B. Employees shall be at their work station and ready to begin work at their scheduled beginning time. The inability to do so shall be reported by the employee to their immediate supervisor, prior to the set time for reporting.

These violations are only made more severe by the fact that you have been provided with repeated direction for compliance with orders issued to you. For your convenience, the City of Artesia has made every possible accommodation including not requiring you to report to any particular duty station giving you the opportunity to completed the required paperwork and make the required contact calls at locations that best suited you.

Because of your continued failure, to comply with directives at this point you are also in violation of an additional section of the Artesia Police Department Operating Procedures which states the following:

ADM04.06

G. Under all conditions including normal day to day operations, all personnel shall promptly obey any lawful order of a superior. In the event the superior officer is unable to communicate directly, any employee of the same or lesser rank may convey the order.

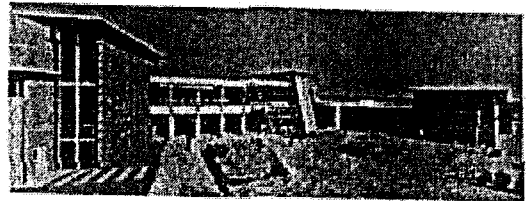
The letter served to you on December 12, 2013 served as a notice of reprimand. That notice indicated that your continued non-compliance with orders would result in termination. Therefore, having exhausted all other avenues this letter serves as your notice of termination. It is my intent to terminate your employment with the City of Artesia effective December 17, 2013. Should you wish to appeal this termination you must contact Mr. Thalman by January 2, 2014.

Sincerely,

Donald N. Raley  
Chief of Police  
Artesia Police Department  
Artesia, NM

# ARTESIA POLICE DEPARTMENT

CHIEF DONALD N. RALEY  
204<sup>TH</sup> FBI NA



December 11, 2013

POST OFFICE BOX 1659  
ARTESIA, NEW MEXICO 88211-1659  
(575) 746-5000 • FAX (575) 746-8724  
EMAIL: draley@artesianm.gov

Corporal Humberto Flores  
22 W. Wells  
Roswell, NM 88203

Corporal Flores,

On November 21, 2013 Mr. Bill Thalman, Director of the City of Artesia Human Resources Department provided you with a letter acknowledging the receipt of your last doctors notice and giving you instructions on how to proceed to ensure your continued employment with the City of Artesia. The primary directive in that letter indicates that you were to complete forms provided for your Family Medical Leave Act (FMLA) compliance. In addition to that, you were directed to contact Mr. Thalman's office twice a month to provide him an update with reference to your potential return to work status. In light of your leave status, this required paperwork and these required contacts are your duty obligations, and you have failed to meet these obligations.

Section ADMO5.02 D indicates that:

Written directives are position statements by or authorized through the Chief of Police that direct the actions and activities of members of the Department. Directives encompass means by which the Department communicates instructions, orders and duty requirements to its members.

Therefore, as policy dictates Mr. Thalman's letter to you correctly outlined your current duty requirements. You have not fulfilled those duty requirements leading to the violation of the following Artesia Police Department operating procedures:

PER12.06 Reporting for duty:

- A. Employees of the Department shall be fit, prepared and punctual in reporting for duty at the time and place designated by their supervisor.
- B. Employees shall be at their work station and ready to being work at their scheduled beginning time. The inability to do so shall be reported by the employee to their immediate supervisor, prior to the set time for reporting.

These violations are only made more severe by the fact that you were not required to report to any particular duty station, but were giving the opportunity to complete the required paperwork and make the required contact calls at locations that best suited your recovery process.

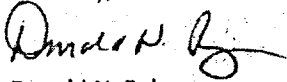
Corporal Humberto Flores

Page 2

December 11, 2013

This letter serves as your formal notice of reprimand for these violations. You are to immediately comply with Mr. Thalman's directives or face termination. Mr. Thalman will expect that the necessary paperwork be completed and returned to him by December 20, 2013 and the first of the phone calls you will make to bring yourself into compliance will be received no later than Monday, December 16, 2013.

Sincerely,

A handwritten signature in black ink, appearing to read "Donald N. Raley", with a stylized flourish at the end.

Donald N. Raley

Chief of Police

Artesia Police Department

Artesia, NM





## THE CITY OF ARTESIA NEW MEXICO

511 W. TEXAS AVENUE  
PO BOX 1310  
ARTESIA, NM 88211-1310

(575) 746-3593 MAYOR  
(575) 746-2122 CITY CLERK  
(575) 746-3886 FAX

November 21, 2013

Humberto Flores  
22 W Wells  
Roswell, NM 88203

Corporal Flores

We are in receipt of your doctor's notice dated 10/22/13 restricting you from work. This letter is to inform you that your absences qualify as medical leave under the Family Medical Leave Act (FMLA) and the City of Artesia Employee Handbook. Under FMLA employees you are eligible to take any combination of annual leave, sick leave, leave covered by The Workers Compensation Act or leave without pay up to twelve (12) weeks for a "serious medical condition," or other reasons as outlined in the Employee Handbook section 1-6-16 E.

Employees covered under the FMLA are eligible to return to their previous job at the same pay and benefits at the end of their leave as long as that leave does not exceed twelve (12) weeks. Additionally, you are able to continue your medical benefits, but you are responsible for your portion of the premium if your leave is unpaid.

Effective 10/22/13 any time off for illness or medical reasons for related to your medical condition will be considered leave under FMLA. This leave will count towards the twelve (12) weeks of FMLA leave.

Unless approved by City Council as outlined in section 1-6-12 K of the employee handbook, you will not be allowed to take twelve weeks of unpaid leave on top of, or in addition to, your paid leave thereby extending FMLA beyond the greater of twelve weeks or the total of your accumulated paid leave.

You will need to complete the enclosed forms "Family and Medical Leave Request" and Family and Medical Leave Notification. The form "Certification of Health Care Provider" needs to be completed by your health care provider.

Please read through this information carefully, complete, sign and return the attached forms by Friday 12/20/13. If you are unable to return the completed forms by the due date you will need to contact my office with an explanation as to the reason they cannot be completed. Failure to return these forms by the requested date or failure to contact my office could jeopardize your rights under the FMLA.

Additionally, it is very important that you keep me informed of your medical and return to work status. You are required to contact my office twice a month beginning the week of 12/1/13 with an update on your status. You are also required to respond in a timely manner to all requests for information concerning return to work or medical status from your Sargent, Commander, Chief and myself.

Failure to contact my office as required, failure to respond to requests for information from myself or the Police Department chain of command and/or failure to complete and return required paperwork will be considered a disciplinary matter and will lead to disciplinary action up to and possibly including termination.

If you have any questions please call my office.

Sincerely

A handwritten signature in cursive script that reads "Bill Thalman". The signature is written in dark ink and is positioned above the printed name.

Bill Thalman

Human Resources Director

Human Resources Director  
Family and Medical Leave Notification

I, Humberto Flores, have read and understand the information contained in this letter. I understand that a failure to return to work at the end of my approved leave period, if 12 weeks or less, may be treated as a resignation unless an extension has been agreed upon and approved by Human Resources, the Mayor and City Council. Also, I may be replaced in my current position if my absence exceeds 12 weeks, and later terminated if a suitable position cannot be found when I am released to return to work. Failure to provide medical evidence any time may be considered grounds for termination.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

313 W. Country Club Road  
Suite 4A  
Roswell, NM 88201  
Phone: (505) 622-2882  
Fax: (505) 622-2883

## Reynaldo R. Martinez, MD, LLC

10/22/2013

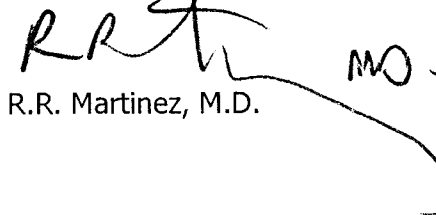
City of Artesia, NM

To whomever it may concern:

I am writing this letter on behalf of my patient, Humberto Flores. Please be informed that I have never cleared him to return to any level of employment. His last work excuse dated 8.29.13 was intended for him to be off work for another month and this was to be followed by re-evaluation. He was not cleared to return to work at that time.

Mr. Flores continues to suffer from severe, debilitating back pain which was caused by an injury incurred while he was carrying out his duties as a police officer in your employ. Thank you for your time. Please contact me if you require additional information.

Cordially,



R.R. Martinez, M.D.



**Artesia Police Department**  
**Artesia, NM 88210**



**Interoffice Correspondence**

**To: Cmdr. Chavarria**

**Date: October 22, 2013**

**From: Sgt. Chris Larsen**

**Subject: Humberto Flores**

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In regard to our conversation about Mr. Flores returning to work, this is to notify you of my attempts to contact him. I have attempted to contact him on his cell phone via text messages at the phone number that I have for him (575)444-6636.

On Saturday October 12, 2013 I sent him a message asking him if he was coming back to work and received no response. Again on October 16, 2013 I sent him another message wishing him a happy birthday and again did not receive a response. As I understood he was supposed to return to work on October 12, 2013 and did not show for work and did not contact dispatch, myself or any other employee stating that he would not be at work.



## THE CITY OF ARTESIA NEW MEXICO

511 W. TEXAS AVENUE  
PO BOX 1310  
ARTESIA, NM 88211-1310

(575) 746-3593 MAYOR  
(575) 746-2122 CITY CLERK  
(575) 746-3886 FAX

January 21, 2014

Humberto Florez  
22 W. Wells  
Roswell, NM 88203

Re: Written Notice of Final Decision

Dear Corporal Florez

This is your written notice of final decision. As required by the City of Artesia Personnel Ordinance the following information is provided to you.

Date of Delivery:

January 21, 2014

Address the employee's defenses:

After being adequately notified by Certified Mail, you failed to attend the pre-termination hearing held on January 16, 2014.

Based on all of the information provided at the pre-termination hearing, sufficient evidence exists to proceed with the proposed disciplinary action of termination of employment.

Specific incidents that indicate just cause:

See letter from Chief Raley dated December 17, 2013 (copy attached)

Violation of any rule or mandate:

See letter from Chief Raley dated December 17, 2013

Final Decision:

Uphold the proposed disciplinary action of termination of employment.

Date of Action:

As determined by Mayor with approval of Council.

Right of Appeal:

In accordance with personnel ordinance 615 section 1-6-11, the Mayor will schedule and conduct a termination hearing before the governing body within ten (10) working days after the pre-termination hearing.

You are entitled to:

- A. A closed or open hearing,
- B. The right to have an attorney at the hearing at your expense,
- C. Actual notice of specific charges in sufficient detail to enable the preparation of a defense,
- D. Evidence to be used,
- E. The names of adverse witnesses,
- F. The opportunity to present favorable witness testimony,
- G. See the adverse evidence prior to the hearing at least the day before the hearing,
- H. Cross examination of employee and employer adverse witnesses; the rules of evidence shall not apply,
- I. Attend the meeting,
- J. The parties may agree on an alternate time and date.

Notice of specific charges:

See letter from Chief Raley dated December 17, 2013

Evidence to be used:

- Letter from Chief Raley dated December 17, 2013
- Letter from Chief Raley dated December 11, 2013
- Artesia Police Manual Standards Operation Procedures Manual.
- City of Artesia Personnel Manual.
- Employee files for Humberto Florez.

Names of Adverse Witnesses:

- Don Raley
- Lindell Smith

The decision of the Governing Body shall be the final step in the administrative process provided by City of Artesia personnel ordinance and can be reviewed in district court:

- A. When the decision is arbitrary or capricious; or
- B. When the decision is unsubstantiated by evidence; or
- C. When the decision is in excess of the statutory authority or jurisdiction of the Governing Body.

If you have any questions please feel free to contact me.

Sincerely



Bill Thalman  
Human Resource Director

Cc: Mayor Burch  
Chief Raley  
John Caraway





Artesia Police Department  
3300 W Main Artesia NM, 88210  
(575) 746-5000  
Voluntary Statement Form



Name Nathan Cobb DOB 7-20-1981 SSN 525-43-9978  
Address 805 W. Lolita  
Home Phone 575-973-7356 Cell Phone Same

The following statement is given voluntarily and is true and accurate to the best of my ability. I give the following statement knowing that I will be committing a crime if I know it to be false, and consequently, I could be arrested, convicted, fined and or imprisoned in accordance with Municipal Ordinance 5-1B-16B and/or NM State Statute 30-39-1

I have read or had been read the foregoing warning and my signature indicated my understanding thereof

Signature [Signature] Date 10/16/13

On September 28<sup>th</sup> 2013, at approximately 1100 hours, I Nathan Cobb was at the Church of Jesus Christ of Latterday Saints when I saw Humberto Flores and asked him how he was because Cpl. Terry Gallagher had advised me that he was injured. Humberto Flores advised me that he was still injured and in pain. Humberto Flores was not standing upright but with a stoach. I then asked how Humberto was being treated and he chuckled and advised "What do you think?" I told him to take care of himself and shook his hand. I went to church the next two Sundays in Roswell and did not see Humberto there.

End of Statement

Signature [Signature]

Date 10/16/13

Page \_\_\_\_\_ of \_\_\_\_\_



## THE CITY OF ARTESIA NEW MEXICO

511 W. TEXAS AVENUE  
PO BOX 1310  
ARTESIA, NM 88211-1310

(575) 746-3593 MAYOR  
(575) 746-2122 CITY CLERK  
(575) 746-3886 FAX

October 14, 2014

Humberto Flores  
22 W Wells  
Roswell, NM 88203

Corporal Flores

We are in receipt of your release to return to work by Dr. Martinez dated September 29, 2013. On October 2, 2013 you were mailed a letter requesting that you return to work by October 12, 2013. This letter was received and signed for on October 7, 2013.

As of this date, you have failed to report for work and you have failed to contact my office. As stated in the letter dated October 2, 2014, your failure to contact my office or return to work by the requested date will be considered your letter or resignation.

You have until Monday October 21, 2013 to return all equipment issued to you by the Artesia Police Department. A list is enclosed. If you fail to return these items, the City will pursue all avenues to collect the cost of these items and all associated costs including, but not limited to, reasonable attorney's fees, court costs and interest at a legal rate allowed.

If you have any questions please feel free to contact my office.

Sincerely

Bill Thalman  
Human Resources Director



## THE CITY OF ARTESIA NEW MEXICO

511 W. TEXAS AVENUE  
PO BOX 1310  
ARTESIA, NM 88211-1310

(575) 746-3593 MAYOR  
(575) 746-2122 CITY CLERK  
(575) 746-3886 FAX

October 02, 2014

Humberto Flores  
22 W Wells  
Roswell, NM 88203

Corporal Flores

We are in receipt of your release to return to work by Dr. Martinez dated 9/29/13. Please report to Sgt. Larsen on Saturday 10/12/13 at 8:00 pm.

If you do not report to work on 10/12/13 as requested or you fail to contact me to discuss why you would be unable to report, the City will assume you are no longer interested in employment with the City of Artesia.

If you have any questions please feel free to contact my office.

Sincerely

Bill Thalman  
Human Resources Director

Reynaldo R. Martinez, MD, LLC  
313 W. Country Club Road  
Suite 4A  
Roswell, NM 88201  
Phone: (575) 622-2882  
Fax: (575) 622-2883

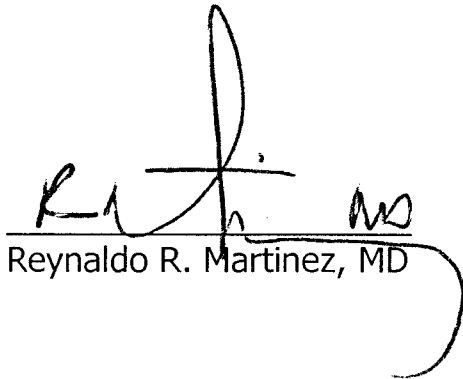
## **Certificate to Return to Work or School**

Humberto Flores

Has been under my care and is able to return to work or school on:

8.30.13

Remarks: Please excuse from work completely due to work related injury. Mr. Flores is currently undergoing diagnostic testing related to his injury and needs to be away from work full time. He will need to see me again before returning to work in 1 month. Thank you.



Reynaldo R. Martinez, MD

7/30/2013

Reynaldo R. Martinez, MD, LLC  
313 W. Country Club Road  
Suite 4A  
Roswell, NM 88201  
Phone: (575) 622-2882  
Fax: (575) 622-2883

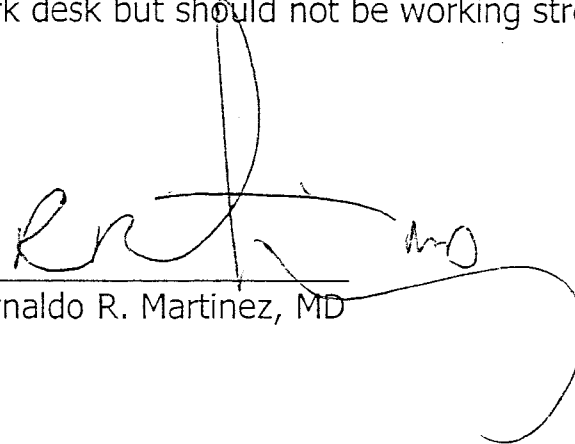
## **Certificate to Return to Work or School**

Humberto Flores

Has been under my care and is able to return to work or school on:

7.14.13

Remarks: Please excuse from work due to work related injury. May work desk but should not be working street.



Reynaldo R. Martinez, MD

6/14/2013

Reynaldo R. Martinez, MD, LLC  
313 W. Country Club Road  
Suite 4A  
Roswell, NM 88201  
Phone: (575) 622-2882  
Fax: (575) 622-2883

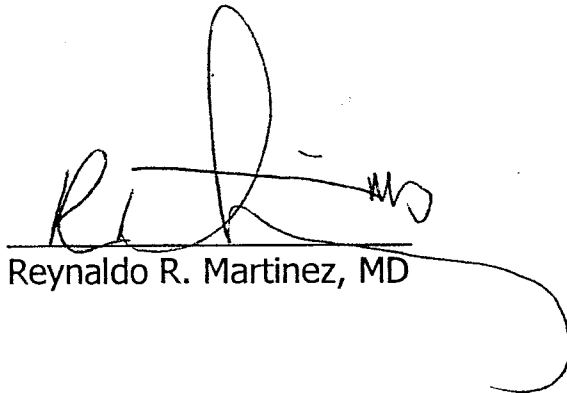
## **Certificate to Return to Work or School**

Humberto Flores

Has been under my care and is able to return to work or school on:

9.30.13

Remarks: Please excuse due to work related injury. THank you.



Reynaldo R. Martinez, MD

8/29/2013